

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7267 of 1992

with

CIVIL APPLICATION No 5677 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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M J BRAHMBHATT

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 7267 of 1992  
MR RD RAVAL for Petitioner  
MS MANISHA LAVKUMAR, ASST. GOVERNMENT PLEADER  
for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution the petitioner has prayed for the following reliefs:-

- (a) to declare the petitioner as a Class-II Gazetted Officer with effect from 1.1.1973 in the pay scale of Rs.650-1200 under the Probation of Offenders Act 1958 and the Rules framed thereunder (prior to the amendment) and to grant all consequential benefits and all pecuniary benefits till the date of retirement.
- (b) to quash and set aside the charge sheet dated 25.5.1992 issued by respondent no.2 Director of Social Defence and to declare that Director of Social Defence Department had no authority to initiate disciplinary proceedings against the petitioner.
- (c) to direct the respondents to fix pension, gratuity etc to the petitioner and to pay all admissible benefits of retirement.

2 As regards the prayer regarding declaration that the petitioner is a Class-II Gazetted Officer, in Special Civil Application No.2342 of 1980 filed by another probation officer, a Division Bench of this Court (Coram: Hon'ble Mr Justice S.H. SHETH & Hon'ble Mr Justice G.T.NANAVATI) passed the following order on 23.10.1980 while dismissing the petition:-

"The petitioner is a probation officer. he filed in this Court Special Civil Application No.2215 of 1979. That petition was allowed and the Government was directed to place him in Class-II service along with other probation officers belonging to his cadre. This Court also directed the Government to give him all other consequential benefits. Since then the Government has abolished Class-II posts of probation officers by amending the relevant Rules with effect from January 8, 1980. The effect of the amendment made to the Rules is that all probation officers now become Class-III employees, the petitioner alone cannot continue as a Class-II officer. He has got to go down along with other to Class-III. Therefore, the benefit given to him in Special Civil Application No.2215 of 1979, is in no way denied to him, when all the probation officers belonged to Class-II services the petitioner was also ordered, by this Court to be placed in that class and when all the probation officers are now made class-III

employees, he goes to Class-III service along with them. The grievance which Mr Vyas had made is that the petitioner loses the gazetted status. In our opinion, that is an insignificant consequence of the amendment to the Rule as all other lose it. So far as the service conditions are concerned, they are not affected because what all the probation officers who are now designated as Class-III employees would be paid would also be paid to the petitioner, no doubt, in terms of length of his service. We do not find in the impugned Amendment Rules anything which adversely affect his service conditions. Therefore, merely because the petitioner loses the gazetted status as 11 others lose, he cannot make any grievance before this Court. The petition, therefore, fails and is dismissed. The notice is discharged."

The learned AGP has, therefore, submitted that in view of the aforesaid decision the petitioner may not be granted relief regarding the declaration of Class-II status. Mr R.D.Rawal, learned counsel for the petitioner, has, however, urged that certain aspects were not brought to the notice of the Division Bench and if the provisions of The Probation of Offenders Act, 1958 had been considered, a different view could have been taken.

Since the issue was earlier considered by the Division Bench of this Court, the said judgement is binding and it is not open to this Court to go behind the judgement. Hence, the relief for declaration of Class-II status cannot be granted. In view of the decision of the Division Bench the petitioner is not entitled to ask for anything more than what was given to other probation officers, as referred to in the judgement.

3 As far as the relief for quashing and setting aside the charge sheet dated 25.9.1992 is concerned, it appears that by an interim order this Court had permitted the Department to proceed with the inquiry but the department was required to obtain the permission of this Court to implement the findings of the inquiry officer. The department has accordingly filed Civil Application No.5677 of 1999 seeking leave for implementation of the result of the inquiry pursuant to the aforesaid charge sheet.

4 Since the departmental inquiry is already held

and the inquiry officer has already submitted the report, it would be for the department to consider whether in the light of the report of the inquiry officer any further action is required to be taken. In this petition under Article 226 of the Constitution this Court would not interpose itself and sit in appeal over the report of the enquiry officer who has found that two out of the three charges levelled against the petitioner were proved.

5 Mr Raval, however, submits that according to the petitioner, the inquiry in question could not have been instituted by the Director of Social Defence as the petitioner is a Class-II Officer and only the State Government is the competent authority. This issue is again sought to be connected with the first prayer for declaration of status as a Class-II officer. Since that prayer is already rejected, it cannot be permitted to be reagitated in an indirect manner. Hence, there is no question of considering the aforesaid contention and the same is rejected.

6 However, Mr Raval submits that the petitioner has already reached the age of superannuation and earlier the petitioner had given an application for voluntary retirement after completion of 20 years of service but the department did not permit the petitioner to voluntarily retire and went on holding departmental inquiries against the petitioner which have also resulted in the petitioner not getting any pension or retiral benefits.

The situation is partly of the petitioner's own making. Pendency of this petition filed by the petitioner himself and the interim order obtained by the petitioner caused this situation. Anyhow, since the petitioner has already reached the age of superannuation during the pendency of the petition, while declining to grant reliefs as prayed for by the petitioner, the Court considers it just and proper to dispose of the present petition with the following directions:-

(i) Civil Application No.5677 of 1999 is granted.

The Director of Social Defence shall consider the inquiry officer's report and take final decision thereon within two months from the date of receipt of writ of this Court or a certified copy of the judgement whichever is earlier.

(ii) In light of the orders which may be passed in the aforesaid departmental inquiry or any other inquiries the Director of Social Defence shall fix the petitioner's pay as well as pension and

gratuity and compute all the retiral benefits within four months from the date of receipt of writ of this order or a certified copy of the judgement whichever is earlier and within two months thereafter the respondent shall pay all the dues of the petitioner including arrears of difference of salary, if any, and arrears of pension and any other retirement dues which may be outstanding.

7 It goes without saying that the petitioner shall cooperate with the respondents in carrying out the aforesaid exercise.

8 The petition is accordingly disposed of in terms of the aforesaid directions.

9 Civil Application No.5677 of 1999 is allowed as aforesaid.

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